

B. Y. SHELLEY.

[To accompany Bill H. R. No. 787.]

MAY 25, 1860.

Mr. ALDRICH, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of B. Y. Shelley, of Nebraska Territory, praying for indemnity for his improvements at Blackbird City, Burt county, N. T., which were taken from him by the Omaha Indian reservation, through the action of the government of the United States, have had the same under consideration, and respectfully report :

From the evidence adduced in this case, it clearly appears that the memorialist made a settlement and commenced valuable improvements on his pre-emption claim, on the west bank of the Missouri river, in said Territory, on the 17th day of October, 1854.

A treaty having been concluded with the Omaha Indians on the 17th day of April, 1854, by which all that portion of said Territory belonging to them lying south of Ayoway river was ceded to the United States, and Congress by the passage of the Kansas and Nebraska act on the — day of —, 1854, and by the appointment of the territorial officers and *their subsequent action under that act*, a legal and actual government was put in operation in the Territory of Nebraska, and, *upon the very land ceded by the said Indians*, as appears upon reference to the volume containing the laws of Nebraska Territory passed at the first regular session of its legislature.—(See proclamation of the governor locating the capital and convening the legislative assembly upon the same, page 52 of said vol., on the 20th December, 1854, the period at which the settlement and improvements of the memorialist were made.) The change in the Omaha Indian reservation which involved the possessions of the memorialist was made pursuant to instructions from the Indian bureau, dated March 21, 1855, as appears upon reference to the communication from the Commissioner of Indian Affairs to Hadley D. Johnson, dated June 21, 1855.

And further, by an act passed by Congress, approved July 22, 1854, entitled “An act to establish the office of surveyor general for New Mexico, and Kansas and Nebraska,” in the 7th section of said act, it

is provided that both the surveyed and unsurveyed lands of Nebraska shall be subject to the law of Congress of 1841, granting pre-emption rights to actual settlers. Hence it appears that Dr. Shelley, the memorialist, had a right, according to law, to make his claim at the time and place that he did make it. It is true that in the first article of the treaty before referred to, with the Omaha Indians, there is a provision in these words: "*Provided, however, That if the country north of said due west line, which is reserved by the Omahas for their future home, should not on exploration prove to be a satisfactory and suitable location for said Indians, the President may, with the consent of the said Indians, set apart and assign to them within or outside of the ceded country a residence suitable for and acceptable to them.*" And from this the Indian department has argued that the memorialist had no right to make his settlement. But this argument, if good, would prove too much, and would show equally that every settlement in that Territory was illegal, notwithstanding the acts of the general government above referred to. In short, the committee can see no difference between the claim as made by Dr. Shelley, and claims made upon the same land by hundreds of others about that time at Omaha City and other points, the legality of which was recognized by the land office of the general government in confirming and perfecting their titles in the same.

The proof is clear that Dr. Shelley never was regularly notified that the Omahas had selected that portion of country (which included his claim) in lieu of that set apart by the treaty as their reservation.

The proof is also clear that the claimant had a very valuable claim; that it was worth and could have been sold at from five to ten thousand dollars during his occupancy of the same, and that it would have realized for him forty to fifty thousand dollars had he been permitted to carry out his plans; that he had expended from fifteen hundred to two thousand dollars in improving it; that the legislature of the Territory had established the county of Blackbird and located the seat of justice of said county at Blackbird City, and upon his claim; that this town was located at a point on the Missouri river that bid fair to be one of the leading towns in the Territory, and that the memorialist had established a ferry across the Missouri river at that point.

And it is further shown by the evidence that the memorialist was, on account of having to surrender his claim when he had such flattering prospects, and had expended all he was worth in improving it, and suffered all the privations and hardships of an extreme frontier, entirely prostrated, both in body and mind, and for three years did not recover sufficiently to follow any business.

Finally, while the committee think it doubtful whether the government is legally bound for all the consequent damages to the memorialist in thus depriving him of his property, yet there can be no doubt he is legally and equitably entitled to a reimbursement of the money he expended; and so believing, they recommend the passage of a bill for his relief.